

Message

From: Wehling, Carrie [Wehling.Carrie@epa.gov]
Sent: 10/7/2019 5:23:56 PM
To: Wade, Alexis [Wade.Alexis@epa.gov]
Subject: Re: Cooling Water Intake Rule - ESA

Ex. 5 Attorney Client (AC)

Call Steve if you are unclear on what's needed.

Sent from my iPhone

On Oct 7, 2019, at 1:19 PM, Wade, Alexis <Wade.Alexis@epa.gov> wrote:

Hold on, I'm trying to gather the 316b materials so we can just send it all at the same time. Mary Ellen sent dave one document earlier. My guess is OST and OWM are working on this now too.

Alexis Wade
Attorney-Adviser
Water Law Office
EPA Office of General Counsel
(202) 564-3273

From: Kupchan, Simma <Kupchan.Simma@epa.gov>
Sent: Monday, October 07, 2019 1:00 PM
To: Wade, Alexis <Wade.Alexis@epa.gov>; Nalven, Heidi <Nalven.Heidi@epa.gov>
Cc: Wehling, Carrie <Wehling.Carrie@epa.gov>
Subject: RE: Cooling Water Intake Rule - ESA

Okay. Heidi, do you want to let us know your thoughts about sharing the '09 memo, and then when we transmit we can ask Steve and Mindy if they also need 316(b) materials at this time?

Simma Kupchan
EPA Office of General Counsel
Water Law Office
WJC North Building # 7426Q
202-564-3105

From: Wade, Alexis <Wade.Alexis@epa.gov>
Sent: Monday, October 7, 2019 12:58 PM
To: Kupchan, Simma <Kupchan.Simma@epa.gov>; Nalven, Heidi <Nalven.Heidi@epa.gov>
Cc: Wehling, Carrie <Wehling.Carrie@epa.gov>
Subject: RE: Cooling Water Intake Rule - ESA

I'm trying to sort through what's going on here. I think they do need the 316b materials but I'm not sure. Earlier Steve asked OST and OWM to put them together

Alexis Wade
Attorney-Adviser

Water Law Office
EPA Office of General Counsel
(202) 564-3273

From: Kupchan, Simma <Kupchan.Simma@epa.gov>
Sent: Monday, October 07, 2019 12:54 PM
To: Nalven, Heidi <Nalven.Heidi@epa.gov>
Cc: Wade, Alexis <Wade.Alexis@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Subject: RE: Cooling Water Intake Rule - ESA

Ok, these are the materials Steve specifically requested. I was focusing on Dave's request as well, but you're right; it looks as if Steve's request was intended to replace Dave's initial request. I agree that it makes more sense to send our updated analysis, but Dave repeatedly asked in the meeting about what we had said at the time of the Silva letter, and it looks like Steve wants to show him that. Do you have concerns about sending along our 2009 memo as well?

When I send I'll confirm with Mindy that Dave does *not* need 316(b) materials at this time.

Simma Kupchan
EPA Office of General Counsel
Water Law Office
WJC North Building # 7426Q
202-564-3105

From: Nalven, Heidi <Nalven.Heidi@epa.gov>
Sent: Monday, October 7, 2019 12:17 PM
To: Kupchan, Simma <Kupchan.Simma@epa.gov>
Cc: Wade, Alexis <Wade.Alexis@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Subject: RE: Cooling Water Intake Rule - ESA

I guess I read Steve's email asking for the original Silva letter: **Ex. 5 Attorney Client (AC)**
Ex. 5 Attorney Client (AC) Per John's email I thought they
wanted to provide is all (again?) as one package. I could be wrong...

From: Kupchan, Simma <Kupchan.Simma@epa.gov>
Sent: Monday, October 7, 2019 12:14 PM
To: Nalven, Heidi <Nalven.Heidi@epa.gov>
Cc: Wade, Alexis <Wade.Alexis@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Subject: RE: Cooling Water Intake Rule - ESA

That sounds right. I think all Dave wants now are the 316(b) materials, though, right?

I think he has all of the 404(g) work we've done.

Simma Kupchan
EPA Office of General Counsel
Water Law Office
WJC North Building # 7426Q
202-564-3105

From: Nalven, Heidi <Nalven.Heidi@epa.gov>
Sent: Monday, October 7, 2019 12:12 PM
To: Kupchan, Simma <Kupchan.Simma@epa.gov>
Cc: Wade, Alexis <Wade.Alexis@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Subject: FW: Cooling Water Intake Rule - ESA

Steve asked me about this in another meeting. I told him that I had prepared a memo in 2010 that was supplemented by verbal legal advice

Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

From: Goodin, John <Goodin.John@epa.gov>
Sent: Monday, October 7, 2019 11:42 AM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Cc: Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Nalven, Heidi <Nalven.Heidi@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Frazer, Brian <Frazer.Brian@epa.gov>
Subject: Re: Cooling Water Intake Rule - ESA

Thanks, Steve— and Mindy, please send me those materials from OGC and the letters Dave references so that we can bundle into one email response.

Thanks!

John

Sent from my iPhone

On Oct 7, 2019, at 11:29 AM, Neugeboren, Steven <Neugeboren.Steven@epa.gov> wrote:

can you all coordinate with mindy – and send her whatever we did to support the silva memo at the time as well as the later legal analysis.

Steve Neugeboren
Associate General Counsel for Water
U.S. EPA
1200 Pennsylvania Ave., NW
Washington, DC 20460
202 (564-5488)

From: Ross, David P <ross.davidp@epa.gov>
Sent: Monday, October 7, 2019 8:41 AM
To: Goodin, John <Goodin.John@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Cc: Fotouhi, David <Fotouhi.David@epa.gov>
Subject: Fwd: Cooling Water Intake Rule - ESA

John,

Could you also send me a copy of the Pete Silva memo and the ECOS letter that triggered it? And are you aware of any OGC analysis that was done in support of the Silva memo? Thanks.

Dave

Sent from my iPad

Begin forwarded message:

From: "Ross, David P" <ross.davidp@epa.gov>
Date: October 7, 2019 at 8:39:09 AM EDT
To: "Fotouhi, David" <Fotouhi.David@epa.gov>, "Sawyers, Andrew" <Sawyers.Andrew@epa.gov>, "Goodin, John" <Goodin.John@epa.gov>, "Neugeboren, Steven" <Neugeboren.Steven@epa.gov>
Cc: "Leopold, Matt (OGC)" <Leopold.Matt@epa.gov>, "Forsgren, Lee" <Forsgren.Lee@epa.gov>, "Aguirre, Janita" <Aguirre.Janita@epa.gov>, "Wildeman, Anna" <wildeman.anna@epa.gov>
Subject: Re: Cooling Water Intake Rule - ESA

Adding Steve.

Sent from my iPad

On Oct 7, 2019, at 8:38 AM, Ross, David P
<ross.davidp@epa.gov> wrote:

Confidential; Deliberative

I'm currently evaluating a 404(g) state assumption proposal from Florida and Arizona and how to address ESA issues in state-assumed permitting. The proposal mentions the ESA process for the cooling water intake rule as a potential model. Could someone pull together the ESA-based components of that rulemaking for me, such as targeted discussion in the preamble, RTC, Bi-Op, etc. I'm not sure if this is an OGC or OWM assignment, so please work together to figure out the most efficient way to get a packet together.

Thanks!

Dave

Sent from my iPad